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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PASCAL AGIN

Appeal 2008-1675
Application 09/878,269
Technology Center 2600

Decided: December 31, 2008

Before MAHSHID D. SAADAT, JOHN A. JEFFERY, and CARLA M. KRIVAK, *Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellant, pursuant to 37 C.F.R. § 41.52, has submitted a timely Request for Rehearing dated September 17, 2008 (hereafter the “Request”), requesting rehearing of our original decision in this appeal dated July 17, 2008. The Examiner rejected claim 45 under 35 U.S.C. § 102(e) as being anticipated by Baker. We sustained the rejection in that decision.

We have reconsidered our decision of July 17, 2008, in light of Appellant's comments in the Request, and we find no errors therein. We, therefore, decline to change our prior decision for the following reasons.

Appellant contends the decision sustaining the rejection "is based on a misunderstanding of the prior art and how it relates to the claim language" (Request 1). Specifically, the Appellant argues the adjustments in step sizes in Baker are not variations of the transmission power (Request 2). Additionally, Appellant asserts that any transmission power adjustments occur at a time later than the power step adjustments and, thus, not in anticipation of a detected power deficit (Request 2 and 3).

At the outset, we take exception to Appellant's statement that "[t]he Board has concluded that Baker satisfies this requirement of claim 45 by satisfying the bold-face language" (Request 1). Baker, however, satisfies more than just the bold-faced language—it satisfies all of the limitations recited in the claim.

To anticipate a claim, each and every element set forth in a claim must be found in a single reference. *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Given this mandate, we considered each and every limitation in claim 45, including the entire language quoted on page 1 of the Request, in determining Baker anticipates claim 45.

Appellant argues the power adjustment steps disclosed in Baker fail to disclose an application of anticipated variations of the transmission power as recited in claim 45 (Request 2 and 3). Other than reciting "in the event of target value variation" in claim 45, we note the claim lacks a temporal component regarding when the anticipated variation of a transmission power is applied. The Specification also describes at least one situation where the

anticipated power variations are applied *after* a target value variation has been applied (Spec. 24:22-26). Moreover, as noted in the decision, the Specification supports a means for applying the anticipated power variations through a series of applications delayed in time and not instantaneous (Decision 5 and 6). Thus, giving claim 45 its broadest reasonable interpretation in light of the Specification, the claim does not exclude some transmission power variation applications in Baker anticipating the transmission power variations, while the other applications may not.

With this understanding in mind, we turn to Baker. Baker discloses conditions when transmission power variations are anticipated. As we noted in the decision, these situations include during power interruptions and before the receipt of a power command (Decision 5; Baker, col. 1, l. 67-col. 2, l. 2, col. 5, ll. 8-10 and 15-19, and col. 7, ll. 37-45). Furthermore, as explained in the decision, the power control adjustments of Baker can be applied at the start of transmission during a power interruption (Decision 5; Baker, col. 5, ll. 8-19). Thus, Baker discloses a scenario where power adjustments are made in anticipation of a power variation during a power interruption at the restart of transmission.

Additionally, Baker discloses using a target value variation or the rate of change of the channel attenuation to detect this anticipated power variation during a power interruption and to adjust the power (Decision 7 and 8; Baker, col. 5, ll. 8-19). The decision explains that the described channel attenuation is a threshold or target value, and Baker determines the rate of change in the channel attenuation or a variation in this target value (Decision 7 and 8). The decision also explains Baker then uses this target value variation to determine when to apply the power variations or to

anticipate transmission power variations during power interruptions in the event of this target value variation as recited in claim 45. (*Id.*)

Next, Baker discloses the power adjustment steps are applied to adjust the power, including applying anticipated power variations during a power interruption (Decision 6 and 7; col. 4, l. 33 – col. 5, l. 7). Appellant argues that these adjustments are not anticipated variations of the power because they are performed at a time later than the change in the step size (Request 2 and 3). As stated above, claim 45 does not require the anticipated transmission power variations to be applied instantaneously upon calculating the target threshold variation but can include a delay between the power step adjustments and the application of the anticipated power variation.

Moreover, as Figure 4 in Baker demonstrates, the power control step size *may* be modified at step 408. However, at step 406, when the step size is not greater than the minimum, the power is adjusted without a step size change (N at step 406). Thus, there is at least one scenario in Baker where the power adjustment occurs without delay or a power step adjustment.

Furthermore, given the breadth of claim 45, the anticipated variation in Baker can be applied such that the first step anticipates the power variations but the later steps may not. As stated above, Baker applies anticipated power variations in one scenario at the start of transmission (Decision 5; col. 5, ll. 8-19). Thus, at least the first step of the power adjustments described in Baker (Decision 6; col. 4, l. 33 – col. 5, l. 7) occurs prior to, or in anticipation of, the transmission power variation. Moreover, Appellant admits with regard to Baker that “[t]he adjustment to the increment size at time t_1 is in *anticipation* of a need for a significant power increase at time t_2 ” (Request 2) (emphasis added). Thus, based on the above

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reasons, Baker discloses “means for applying, in the event of target value variations, anticipated variations of at least one of the transmission power” as recited in claim 45.

We have carefully considered the arguments raised by Appellant in the Request, but none of these arguments persuade us that the original decision was in error. We are still of the view the invention set forth in claim 45 is anticipated by Baker based on the record before us in the original appeal.

We have granted Appellant’s request to the extent that we have reconsidered our decision of July 17, 2008, but we deny the request with respect to making any changes therein.

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REHEARING DENIED

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